

PREKAS,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LASALLE BANK NATIONAL ASSOCIATION, as
Indenture Trustee,

Interpleader Plaintiff,

- against -

BNP PARIBAS, LONDON BRANCH; AMBAC
CREDIT PRODUCTS LLC; NATIXIS
FINANCIAL PRODUCTS INC.; XL
INVESTMENT MANAGEMENT LTD.; XL LIFE
INSURANCE AND ANNUITY COMPANY; XL
LIFE LTD.; CEDE & CO., as holder of certain
Notes and nominee name of the Depository Trust
Company; and DOES 6 through 100, owners of
beneficial interests in certain Class A-1T, Class A-2,
Class A-3 and Class A-4 Notes.

Interpleader Defendants.

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ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/15/09

PROPOSED ORDER

Case No. 08-cv-6134
(LAP)

WHEREAS, Interpleader Plaintiff Bank of America, National Association, successor by merger to LaSalle Bank National Association, as Indenture Trustee (the "Trustee"), commenced this action on July 3, 2008 and filed a First Amended Interpleader Complaint on September 3, 2008 (the "Complaint") naming as defendants BNP Paribas, London Branch ("BNP Paribas"), Ambac Credit Products LLC ("Ambac"), Natixis Financial Products Inc. ("Natixis"), XL Investment Management Ltd. ("XL Investment"), XL Life Insurance and Annuity Company ("XL Life Insurance"), XL Life Ltd. ("XL Life"), Cede & Co. as the registered holder of record of the Class A-1T, Class A-2, Class A-3 and Class A-4 Notes, and Defendants Does 6 through 100 (the "Doe Defendants") as the beneficial owners of the interests in the Notes held by Cede & Co. (collectively, the "Interpleader Defendants"), with respect to certain assets held by the Trustee pursuant to the Indenture, dated as of September 7, 2006, by and among itself, ESP

Funding I, Ltd., as Issuer and ESP Funding I (Delaware) Corp., as Co-Issuer (as amended, the “Indenture”);¹ and

WHEREAS, certain of the Interpleader Defendants have asserted competing claims to certain funds that are or may be distributable to one or more of the Interpleader Defendants under the Indenture (the “Disputed Funds”); and

WHEREAS, the Trustee has put the Disputed Funds in escrow and posted a bond payable to the Clerk of the Court in the amount of \$4,669,077.73, pending a determination by the Court of the disputes of the Interpleader Defendants to such Disputed Funds; and

WHEREAS, the Trustee and all of the named Interpleader Defendants (besides the Doe Defendants, which have not appeared) except Cede & Co. consent to the entry of this Order,

WHEREAS, Cede & Co. joins in and consents to entry of the last paragraph of this stipulation and Order only and takes no position but does not object to the entry of the rest of the Order; it is hereby

ORDERED, that this Court has jurisdiction over the subject matter of this action; and it is further

ORDERED, that this action is appropriately brought as an interpleader; and it is further

ORDERED, that pending a final judgment with respect to the disposition of the Disputed Fund (the “Final Judgment”), the Trustee shall maintain the Disputed Funds in escrow; and it is further

¹ Each capitalized term used but not defined herein shall have the meaning ascribed to such term in the Indenture.

ORDERED, that the Interpleader Defendants shall interplead their claims to the Disputed Funds; and it is further

ORDERED, that upon entry of the Final Judgment, the Trustee shall distribute the Disputed Funds in accordance with the Final Judgment; and it is further

ORDERED, that pending the Final Judgment, the Interpleader Defendants and all claiming through or acting with them, or any other person or entity claiming any interest, legal or beneficial, in the Disputed Funds, are hereby enjoined pursuant to 28 U.S.C. §§ 2283 or 2361 from commencing or prosecuting any separate litigation concerning or relating to the Disputed Funds; and it is further

ORDERED, that the Trustee is hereby released and discharged from any and all liability to any person claiming to have suffered harm as a result of the fact that the Trustee has escrowed the Disputed Funds and commenced and maintained this interpleader action. The release and discharge of this paragraph does not release or discharge the Trustee in respect of any claims based on the distribution of any funds before the filing of the within action, the Trustee's compliance with its obligation to escrow the Disputed Funds, the calculation of the amounts required to be escrowed and/or distributed, or the manner in which the escrowed funds were held, and is conditioned upon the Trustee's compliance with the future orders and Final Judgment of the Court as described above; and it is further

ORDERED, that on or before July 31, 2009, the Trustee shall give notice that August 17, 2009, shall constitute the deadline to intervene or join this action (the "Intervention Deadline", as follows: (1) by preparing a notice advising of the pendency of this action and of the Intervention Deadline (the "Notice"); (2) by posting the Notice, the Complaint and this Order on the Trustee's website; (3) by providing a copy of the Notice, the Complaint

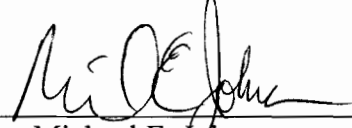
and this Order to defendant Cede & Co., for delivery to those Participants (as that term is used in the Rules of The Depository Trust Company) who are identified on the books and records of The Depository Trust Company as having on deposit with The Depository Trust Company as of May 1, 2009, any of the Class A-1T, Class A-2, Class A-3 and Class A-4 Notes; (4) by providing Cede & Co. a listing of Committee on Uniform Security Identification Procedures (CUSIP) numbers for the Class A-1T, Class A-2, Class A-3 and Class A-4 Notes; (5) by delivering a copy of the Notice, the Complaint and this Order by first-class mail to each of the holders of record of the Class A-1T, Class A-2, Class A-3 and Class A-4 Notes, representing 100% of the aggregate principal amount outstanding on such Classes of Notes, at the address maintained in the Trustee's note register; and (6) by delivering a copy of the Notice, the Complaint and this Order by first-class mail to all parties entitled to such Notice pursuant to Section 14.3 of the Indenture, including the Co-Issuers, the Collateral Manager, the Hedge Counterparties, the Advance Swap Counterparty and the Rating Agencies; and it is further

ORDERED, that upon receipt of a copy of the Notice, the Complaint and this Order, Cede & Co. shall distribute or post electronically a copy of the Notice, the Complaint and this Order to those of its Participants (as that term is used in the Rules of The Depository Trust Company) who are identified on the books and records of The Depository Trust Company as having on deposit with The Depository Trust Company as of May 1, 2009, any of the Class A-1T, Class A-2, Class A-3 and Class A-4 Notes.

Dated: New York, New York
July 14, 2009

STIPULATED & AGREED:

ALSTON & BIRD LLP

By: 
Michael E. Johnson

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New York, New York 10016
(212) 210-9400

*Attorneys for Bank of America, National
Association, successor by merger to
Interpleader Plaintiff LaSalle Bank National
Association, as Trustee*

STERN & KILCULLEN, LLC

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Attorneys for BNP Paribas and Natixis

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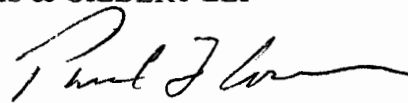
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By:


David W. Dykhous

7/10/09

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Attorneys for Ambac Credit Products LLC

STIPULATED & AGREED AS TO THE LAST PARAGRAPH ONLY:

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KAKOYIANNIS, P.C.

By:

Eric P. Heichel

805 Third Avenue
New York, New York 10022
Phone: 212 752-1000
Attorneys for Cede & Co.

SO ORDERED this ____ day of July, 2009

U.S.D.J.

PATTERSON BELKNAP WEBB &
TYLER LLP

By: _____
David W. Dykhouse

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Attorneys for Ambac Credit Products LLC

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KAKOYIANNIS, P.C.

By: _____
Eric P. Heichel

805 Third Avenue
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Attorneys for Cede & Co.

SO ORDERED this 15th day of July, 2009

Loretta A. Prebka
U.S.D.J.

pursuant to Mr. Johnson's letter (attached)

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July 14, 2009

VIA HAND

Honorable Loretta Preska
United States District Judge
United States District Court
Southern District of New York
500 Pearl St., Room 1320
New York, NY 10007

RECEIVED
JUL 14 2009
LORETTA A. PRESKA
U.S. DISTRICT JUDGE
S. D. N. Y.

Re: *LaSalle Bank NA v. BNP Paribas, et al.*, 1:08-cv-06134-LAP (S.D.N.Y.)

Dear Judge Preska:

We represent Bank of America, National Association, successor by merger to the Plaintiff LaSalle Bank National Association, as Indenture Trustee (the "Trustee"), in the above-referenced interpleader action.

On May 21, 2009, the Trustee filed a motion for entry of an interpleader order (the "Motion") (docket number 52), which order was to include, *inter alia*, certain provisions pertaining to the status of this action as an interpleader, a requirement that all interested parties interplead their claims, a prohibition on competing actions, and certain protections for the Trustee as interpleader Plaintiff. On June 5, 2009, Defendants XL Investment Management Ltd., XL Life Insurance and Annuity Company, and XL Life Ltd. (collectively, the "XL Defendants") filed a memorandum of law in opposition to the Motion (docket number 64). No other party filed any opposition to the Motion. On June 22, 2009, we wrote the Court to report that the Trustee and the XL Defendants had reached a compromise on the text of the proposed order and to request that the Trustee's Motion be withdrawn. The Court "so ordered" the Trustee's request on June 23, 2009 (docket number 69).

Based on the compromise reached by the Trustee and the XL Defendants, and after consultation with all parties, the Trustee has determined that there is no opposition to entry of an interpleader order in this action. Accordingly, enclosed for the Court's consideration is a [Proposed] Order, executed as a stipulation by all parties that have appeared.

Please note that counsel to Defendant Cede & Co. ("Cede") has indicated that, although Cede does not object to entry of the [Proposed] Order, it does not wish to take positions on


Honorable Loretta A. Preska
July 13, 2009
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certain substantive issues that do not directly affect it. The text of the [Proposed] Order reflects Cede's position and includes a separate signature block for its counsel.

We respectfully request that the Court insert appropriate deadline dates and "so order" the [Proposed] Order. If the Court has any questions or would prefer that the Trustee formally move for entry of the [Proposed] Order, please let us know.

Thank you for your continuing attention to this matter.

Respectfully submitted,



Michael E. Johnson

Enclosure

MEJ: jaa

cc: David Dykhous, Esq. (via e-mail w/enc.)
Stephen M. Plotnick, Esq. (via e-mail w/enc.)
Paul F. Corcoran, Esq. (via e-mail w/enc.)
Eric P. Heichel, Esq. (via e-mail w/enc.)